

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 21 2001

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL P. CAMPION, on behalf
of themselves and all others
similarly situated;

Plaintiffs,

v.

CREDIT BUREAU SERVICES, INC.
(a Washington corp.), DARLENE
M. BRIGHT and JOHN DOE BRIGHT
(Wife and Husband), and
THOMAS J. MILLER and JANE DOE
MILLER (Husband and Wife);

Defendants.

NO. CS-99-0199-EFS

**ORDER ESTABLISHING CLASS
ACTION NOTICE CONTENT AND
DISTRIBUTION PLAN**

BEFORE THE COURT is the parties' Joint Proposed Revision to Class Notice and Proposed Distribution Plan, (Ct. Rec. __), filed on August 20, 2001. This document responds to the Court's July 18, 2001, Order Amending Class Certification Order and Setting Deadline for Filing Notice and Distribution Plan, (Ct. Rec. 164). That Order directs the parties to file with the Court a joint proposed revision to the notice attached to the July 18, 2001, Order and a joint proposed distribution plan that provide to the Affidavit Class members the best notice practicable under the circumstances.

1 **I. APPLICABLE LAW**

2 Where a class is certified because common questions of law or
3 fact predominate, class members shall be given notice of the
4 certification that is the best notice practicable under the
5 circumstances. See Fed. R. Civ. P. 23(c)(2). Individual notice must
6 be sent to all members whose names and addresses can be identified
7 through reasonable effort. See *id*; *Eisen v. Carlisle & Jacquelin*, 417
8 U.S. 156, 173 (1974). The notice itself

9 shall advise each member that (A) the court will exclude the
10 member from the class if the members so requests by a
11 specified date; (B) the judgment, whether favorable or not,
12 will include all members who do not request exclusion; and
13 (C) any member who does not request exclusion may, if the
14 member desires, enter an appearance through counsel.

15 Fed. R. Civ. P. 23(c)(2). The notice must include a fair recital of
16 the subject matter and substantive claims, written in objective,
17 neutral terms understood by the average class member; information on
18 the projected recovery, taking into account prospective attorney fees
19 and other administrative costs; any other information a reasonable
20 person would consider material in making informed, intelligent
21 decision of whether to opt out or remain a member of class and be
22 bound by final judgment; and the names and addresses of the attorneys
23 representing the class representative. See, e.g., *Marshall v. Holiday*
24 *Magic, Inc.*, 550 F.2d 1173, 1177-78 (9th Cir. 1977), overruled on
25 other grounds by *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797
26 (1985); *Hitt v. Nissan Motor Co. (In re Nissan Motor Corp. Antitrust*
Litigation), 552 F.2d 1088, 1104-05 (5th Cir. 1977); *Cosgrove v. First*
& Merchants Nat. Bank, 68 F.R.D. 555, 561 (E.D. Va. 1975); *Burwell v.*

1 *Eastern Airlines, Inc.*, 68 F.R.D. 495, 499-500 (E.D. Va. 1975).

2 Finally, the class members must be given adequate time to respond to
3 the notice. See *Holiday Magic*, 550 F.2d at 1178.

4 **II. DISCUSSION**

5 Plaintiff proposes to distribute the class action notice to each
6 class member via first class mail. Because Defendants have the names
7 and addresses of the class members, the Court finds that such
8 distribution provides the best notice practicable under the
9 circumstances. See Fed. R. Civ. P. 23(c)(2).

10 With one exception, the parties agree to the notice attached to
11 the Court's July 18, 2001, Order. Plaintiff wishes to attach copies
12 of the affidavits that Defendants sent to Mr. Campion. Defendants
13 believe this is unnecessary and will add to the notice's mailing
14 costs. Attachment of the affidavits to the notice will assist
15 individuals in understanding the matter to which the notice pertains.
16 Accordingly, copies of the affidavits shall be attached to the notice
17 and the notice shall state that "[t]he two affidavits for writ of
18 garnishment that Defendants sent to Mr. Campion are attached." This
19 amended notice, set forth as Attachment A of this Order, meets the
20 requirements set forth in Fed. R. Civ. P. 23(c)(2) and is approved for
21 distribution to class members.

22 Accordingly,

23 **IT IS HEREBY ORDERED:**

24 1. The class action notice, as set forth in Attachment A, is
25 approved for distribution to the class action members.

2. Defendants shall provide the names and addresses of all class members to Plaintiff no later than **September 7, 2001**. The names and addresses shall be provided on a computer disk in a format acceptable to and readily usable by the mailing service that Plaintiff selects.

3. Plaintiff shall distribute the class action notice by mailing a copy of it by first class United States mail to each class member no later than **September 28, 2001**. Notice expenses shall be borne by Plaintiffs and advanced by counsel for Mr. Campion.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel.

DATED this 21st day of August 2001.

EDWARD F. SHEA
United States District Judge

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1 The Court has made the following rulings in this action: (1)
2 this case shall proceed as a class action as described above, (2) this
3 notice shall be sent to all members of the class, (3) through this
4 notice, the members of the Class shall be advised of the right to opt-
5 out of this class action, (4) if you do not opt-out, you will be bound
6 by the judgment entered by the Court in this action, and (5) if you do
7 not opt-out, you may appear in this action either through counsel for
8 Mr. Campion, the class representative, or through your own counsel.
9 In certifying this class action, the Court has made no ruling on the
10 merits of Mr. Campion's claims or defenses. The class will be
11 required to prove its case.

12 The following questions will be addressed in this class action:
13 (1) whether the affidavits sent to the class members misrepresented
14 the "legal status" of unawarded attorney fees and costs by describing
15 them as "judgment" amounts; (2) whether the affidavits concerned
16 obligations that were incurred for personal, family or household
17 purposes, or for business purposes; (3) whether the affidavits were
18 delivered to the class members or returned as undelivered by the Post
19 Office; (4) whether the affidavits were sent within the applicable
20 statutes of limitations; (5) whether, under the WCPA, Defendants' acts
21 or practices caused injury to the class member in his or her business
22 or property; and (6) questions regarding damages.

23 **B. YOUR RIGHTS AS A CLASS MEMBER**

24 1. If this action is successful, the FDCPA entitles the class
25 members qualifying under the FDCPA statute of limitations to share
26

1 equally in a recovery of statutory damages not to exceed \$500,000.00
2 or up to one percent (1%) of the net worth of Defendants, whichever is
3 less. It is estimated that there are 250 potential class members. In
4 addition, you might receive damages that you actually suffered as a
5 result of any violation of the FDCPA, WCAA or WCPA that Defendants are
6 found to have committed. Finally, Defendants may be liable for the
7 costs of the lawsuit and for reasonable attorneys' fees, as determined
8 by the Court.

9 2. If you wish to participate as a member of this class, you
10 need not do anything. If you participate as a class member, you will
11 be bound by the judgment in this action, whether or not it is
12 favorable to you. If recovery is allowed, your share of any recovery,
13 less the cost of this notice, will be mailed to you as directed by the
14 Court. If you participate as a class member, you have the right to
15 file an appearance or participate as a named plaintiff in this case
16 through your own attorney. It is not necessary to appear or intervene
17 with your own attorney in order to receive your share of any recovery.
18 If you do want to appear or intervene through your own attorney, you
19 must do so no later than **[30 days from the date this notice is**
20 **mailed]**. Otherwise, you will be represented by Michael D. Kinkley or
21 O. Randolph Bragg, counsel for class representative Mr. Champion, at
22 all further court proceedings.

23 3. If you do not want to participate as a member of this class,
24 you must notify Mr. Kinkley or Mr. Bragg by notice postmarked and
25 mailed no later than **[30 days from the date this notice is mailed]**.
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1 The addresses of Mr. Kinkley and Mr. Bragg appear at the end of this
2 notice.

3 If you decide not to participate, you will have the right to
4 bring an individual lawsuit on your own behalf against Defendants as
5 long as you bring suit within the time allowed by law. If you choose
6 to bring your own lawsuit, you will have to prosecute the case to its
7 conclusion separate from the class. If you bring your own lawsuit and
8 win, you might recover a larger amount of money than you will receive
9 under this class action. If you lose your own lawsuit, you will
10 recover nothing and will be responsible for paying your own attorney
11 fees and costs.

12 **C. ADDITIONAL INFORMATION**

13 If you would like more information about this notice or this
14 litigation, you may write to the counsel for class representative Mr.
15 Campion at:

16 Campion Class Action
17 Michael D. Kinkley
18 Michael D. Kinkley, P.S.
914 Northtown Office Bldg.
Spokane, Washington 99207

19 or

20 Campion Class Action
21 O. Randolph Bragg
HORWITZ, HORWITZ & ASSOC.
22 25 East Washington Street, Suite 900
Chicago, Illinois 60602

23 **Please do not contact the Judge or the Clerk of the Court. They**
24 **will not be able to give you advice about this case.** The papers filed
25 in this case are available for inspection in the Office of the Clerk,
26

1 United States District Court for the Eastern District of Washington,
2 825 Jadwin Avenue, Room 174, Richland, Washington 99352.